

INSURANCE

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Steps Taken To Initiate Market Analysis Program

This year the NAIC announced it had developed "A Reinforced Commitment: Insurance Regulatory Modernization Plan." One portion of that commitment deals with the use of market analysis as a way to better prioritize and allocate market regulation resources. The Department has taken steps to initiate such a program. John Koenig of the Market Conduct Examination Division will be temporarily setting aside his normal examination schedule and undertaking the task of establishing the Department's market analysis program.

We envision a more thorough use of such information as complaint ratios and other regulatory information available through annual statements, the NAIC, and from other divisions within the Department of Insurance.

One of our goals is to become more proactive in identifying and addressing issues as they arise. We foresee our Market Conduct Division being better able to channel their efforts into specific areas and issues. Along with these benefits should also come the better sharing of information with other regulators from across the country. The NAIC has already initiated the collection of names and contact information of insurance department personnel who will be responsible for the market analysis function. It has also recently adopted the first draft of a Market Analysis Handbook that will serve as a foundation for market analysis programs around the country.

We look forward to the improvements this program will make in our overall market regulation program.

LEGAL DIVISION

Personnel Changes

Ann Frohman, General Counsel since January, 2000, has been named Deputy Director and General Counsel.

Ann Frohman, General Counsel, has been named Deputy Director and General Counsel for the Department. Ann joined the Department as an attorney from 1990 to 1996 when she left to serve as the Risk Manager for the State of Nebraska. In 1997, she returned to the Department as Deputy Director and left to enter the private sector where she provided legal counsel to a 10-year-old company transitioning into an ecommerce enterprise. She has served as General Counsel for the Department since her return in January, 2000.

Janette Adair's primary focus will be title insurance, corporate filings, and unauthorized insurers.

Janette Adair has joined the division as legal counsel. Janette's primary focus will be title insurance, corporate filings, and unauthorized insurers.

Indian Sovereignty Rejected in Workers' Compensation Activities

Mark Hubble, an attorney and resident of Sioux City, Iowa, has been ordered to cease and desist the sales of unauthorized workers' compensation insurance.

On December 12, 2003, the Department ordered Mark Hubble, an attorney and resident of Sioux City, Iowa to cease and desist the sales of unauthorized workers' compensation insurance. The order stems from charges brought by the Department that Mr. Hubble unlawfully engaged in the sales of insurance in numerous states, including Nebraska, California, and Connecticut, wherein he issued or authorized the issuance of certificates of coverage claiming that coverage for occupational injury is provided by a tribal nation or nations exempt from state insurance laws. The business promoted by Mr. Hubble primarily focused on workers' compensation coverage for employee staffing firms.

The business promoted by Mr. Hubble primarily focused on workers' compensation coverage for employee staffing firms.

The Department coordinated with the investigative efforts of other insurance departments and issued an order that prevents Mr. Hubble from issuing such certificates, accepting payment, administering claims, and otherwise prohibits him from soliciting others to assist with such insurance activities. Please notify the Department's legal division at 402-471-2201 if you become aware of similar activities.

Motor Vehicle Service Contract Reimbursement Policies

On December 31, 2003, the Department issued a bulletin, CB-106, with regard to motor vehicle service contract reimbursement policies and programs. The bulletin clarified that these types of reimbursement policies and programs must provide that the insurer is responsible for completely and fully reimbursing the provider for all repair costs incurred under the motor vehicle service contract from the first dollar of coverage in order to be in compliance with Nebraska law. Programs that are not currently in compliance must modify their programs and policies to bring them fully into compliance with Nebraska law by April 1, 2004.

The following are questions we have received regarding this bulletin.

1. Does CB-106 apply if there is a contract directly between the insurance company and the customer?

No. The bulletin only applies to situations in which there is one contract between the dealer and the customer (the service contract) and a second contract between the insurer and the dealer (the reimbursement policy).

2. Does CB-106 apply to service contracts issued by a manufacturer for a vehicle made by that manufacturer?

Maybe. If the manufacturer issued the service contract and the service contract covers a vehicle manufactured by that manufacturer, and the dealer that sold the service contract is a franchised motor vehicle dealer licensed under the Motor Vehicle Industry Licensing Act, Neb.Rev.Stat. §60-1401.01 et seq., then the bulletin does not apply. Otherwise, the bulletin applies to those service contracts.

3. Can the dealer or administrator hold onto the funds to make payments under the service contracts?

No. The dealer or administrator who sells the service contracts must obtain reinsurance from a company authorized to provide insurance in this state. The insurer must then pay for everything that the dealer or administrator is required to pay or provide under the service contract.

If the insurance company or risk retention group covers all of the payments made under the service contract and reimburses the dealer if the dealer provides repair services, then the reimbursement policy is probably in compliance with the law.

Additional questions concerning the CB-106 may be directed to Keri Schechinger, Counsel, at 402-471-2201.

Actions Taken Against Agents

CAUSE NO.	ALLEGATION	DISPOSITION
A-1517 Bonita Hilmer Newman Grove, NE	Violated <u>Neb.Rev.Stat.</u> §44-5905(2)(a). Failure to provide information requested by market conduct examiners.	Consent Order Agent's license suspended for 20 days; \$200 admin. fine 12/22/03
A-1518 Cindy Winkleblack Tilden, NE	Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(h). Eight counts of demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state.	Order Agent's license suspended for 45 days; \$5,000 admin. fine; required to file monthly reports with department for 3 years 11/26/03
A-1519 Geoffrey Jennings Council Bluffs, IA	Violated <u>Neb.Rev.Stat.</u> §§44-4028(11) & (13), 44-4059(1)(b), (f) & (i), 44-4065(1) & (2). Failure to report conviction on application; failure to demonstrate trustworthiness; failure to notify department of criminal and regulatory actions issued by another state agency.	Order Agent's license revoked 12/15/03
A-1520 Todd P. Adamson Nebraska City, NE	Hearing for denial of application for agent's license based on <u>Neb.Rev.Stat.</u> §44-4059(1)(f).	Order Denial upheld 11/24/03
A-1521 Steve F. Jansen Fordyce, NE	Violated <u>Neb.Rev.Stat.</u> §44-1525(11). Failure to respond to the department within 15 business days.	Consent Order \$750 admin. fine 1/13/04
A-1522 Victor Young Falls City, NE	Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(b). Violated an order of the director.	Order \$1,000 admin. fine 12/29/03
A-1523 Jerome J. O'Connor, Jr. Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1525(11) and 44-4059(1)(b). Failure to respond to the department within 15 business days; violated any insurance law.	Consent Order Agent's license suspended for 30 days; \$500 admin. fine 1/13/04
A-1524 Charles D. Davis Ainsworth, NE	Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(b). Violated an order of the director.	Order Agent's license revoked 12/31/03
A-1528 Kenneth Kahn Omaha, NE	Hearing for denial of application for agent's license based on <u>Neb.Rev.Stat.</u> §44-4059(1)(a),(b), (f),(h) & (i).	Order Denial upheld 1/26/04

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-1420 United Healthcare Insurance Company (CT)	Violated <u>Neb.Rev.Stat.</u> §44-1525(11). Failure to respond to the department within 15 business days.	Consent Order \$300 admin. fine 1/7/04
C-1423 First Options Corporation (VA)	Voluntarily surrendered Certificate of Authority in Nebraska.	Order Voluntary surrender granted 12/15/03
C-1424 Pafco General Insurance Company (IN)	Company placed in rehabilitation in state of domicile.	Order Certificate of Authority suspended 12/18/03
C-1428 Statewide Insurance Company (IL)	Violated <u>Neb.Rev.Stat.</u> §§44-322 and 44-214. Failure to file audited financial report; failure to maintain capital stock of at least \$1,000,000.	Order Certificate of Authority suspended 12/30/03

CPA audits are due April 1, 2004, and must be completed for all agencies that perform closing, escrow and settlement services in Nebraska.

Title Agency Audits

The Department has received several questions regarding the effective date of the title agency audits required by Neb.Rev.Stat. §44-19,116 and Nebraska Administrative Rules and Regulations, Title 210, Chapter 34. The CPA audits are due April 1, 2004, covering the period ending December 31, 2003. Audits must be completed for all agencies that perform closing, escrow and settlement services in Nebraska.

PROPERTY AND CASUALTY DIVISION

Consent-To-Rate Process

The process can be used for risks you feel pose a greater exposure or a loss history generally not acceptable under your current rate structure/underwriting guidelines, but one you would be willing to write with the appropriate amount of premium.

We want to remind you of the availability of the consent-to-rate process. If you have a risk that you feel poses a greater exposure or a loss history that is generally not considered acceptable under your current rate structure and underwriting guidelines, but you feel that with the appropriate amount of premium it would be a risk you would be willing to write, please consider writing on a

The consent-to-rate process is also addressed in item 13 of Department bulletin, CB-50.

consent-to-rate basis. The insured signs a statement saying they are aware that the rates being charged are in excess of the rates currently on file with the Department of Insurance. That statement along with the company explanation as to the amount of increase and why the increase is necessary is submitted to the Department, which is then stamped, approved and returned to the company. Please review Neb.Rev.Stat. §44-7508(6) for lines subject to File and Use; §44-7511(6)(a) for lines subject to prior approval other than workers' compensation or medical professional; §44-7511(6)(b) for workers' compensation and §44-7511(6)(c) for medical professional. The consent-to-rate process is also addressed in item 13 of Department bulletin, CB-50.

File and Use On Form Filings

Since File and Use is optional on form filings, please note in the cover letter the process that should be followed.

As a result of LB216, which became effective August 28, 2003, Nebraska now allows on an optional basis File and Use for commercial line forms for most lines of insurance. Since the File and Use version is optional on form filings, please note in the cover letter the process that should be followed. We have allowed File and Use for commercial rates since January 1, 2001. Exceptions to this rule include filings made by advisory organizations, workers' compensation and employers liability insurance, insurance covering farms and ranches, excess workers' compensation and medical professional. We encourage all individuals who make filings for companies to take advantage of the File and Use approach that is now being allowed. If you have any questions regarding this, please contact Bev Anderson at 402-471-4654.

Inclusion of E-Mail Addresses on Filings

When making filings, please be sure to include an e-mail address that we can use to contact you if necessary.

When making filings, please be sure to include an e-mail address that we can use to contact you if necessary. Often the filing appears to be acceptable with the exception of a provision such as a cancellation clause that does not comply with our statute. Since most carriers address state specific issues such as cancellation, we often return the filing to the carrier as acknowledged on a File and Use basis. We then follow up with an e-mail to the filer explaining that one provision is not in compliance with statute and assume that there is an appropriate amendatory endorsement in place.

Reminder to Filers

The majority of our correspondence on filings continues to remind filers that Nebraska no longer allows subjective scheduled rating (§44-7512). On many lines, we recognize a rating flexibility of +/-40% (§44-7509). Because the rating flexibility is allowed by statute, it is not necessary to file that with us.

Discount Rates From Crop-Hail Insurers

The crop season for the year 2004 is now here. NCIS did not file new loss costs for the 2004 growing season. The result of the NCIS filing is a decrease of 2.29%. We will try to do your filings as quickly as possible once they are received. We are keeping many of the requirements of the 2003 growing season:

1. The minimum base rate must be \$.50 or lower.
2. The maximum base rate must be at least \$24.00 or higher.
3. Caps or cups will be allowed.
4. Manual pages should include page numbers.
5. Non-base rates should be rounded to the nearest \$.05.
6. Please use the standard NCIS rating methodology for non-base crops and policy form factors. If form factors other than standard NCIS are used, please submit supporting data.
7. Please use NCIS methodology for rates for other crop classes.

Item 4 of the Nebraska Rules Manual Exception Page must show the following items: Rate Range, Loss Cost Range, Loss Cost Multiplier, and Commissions ALR. Item 10 of the Nebraska Rules Manual Exception Page must show both the note due date and the date that interest begins to accrue on notes. Please be advised that the cash discount cut-off is still cash received at the company by July 1 and December 1 for note business. When reviewing programs submitted as add-on programs to be written with MPC1, CRC or other Federal programs, please submit your premium/loss experience as well as experience for these lines.

In order to keep our records updated, please provide the name of the individual in your organization that will be handling the crop filings. Please also include the address, phone number, fax, and an e-mail address.

2004 Minimum and Maximum Cash Discounts

<u>Days</u>	<u>Minimum Discount</u>	<u>Maximum Discount</u>
1	0.0%	2.0%
34	0.0%	2.5%
67	0.0%	3.0%
100	0.0%	3.5%
133	0.0%	4.0%
166	0.0%	4.5%
197	0.5%	4.5%
200	0.5%	5.0%
233	0.5%	5.5%
266	0.5%	6.0%
299	0.5%	6.5%

The DMV is required by statute to develop and administer a motor vehicle insurance database that includes information provided by insurance companies by July 1, 2004.

The "Nebraska Insurance Reporting Guide," which can be viewed at www.dmv.state.ne.us, has been completed and made available by the DMV for use by the insurance industry to prepare for the implementation of the database.

Motor Vehicle Insurance Database To Be Developed

In the 97th Legislature, First Session 2001, Senator David Landis introduced Legislative Bill 488. LB 488 was passed by the Legislature and signed into law by Governor Mike Johanns on April 18, 2002. The bill was codified at Neb.Rev.Stat. §60-302 et.seq., and requires the Department of Motor Vehicles (DMV) to develop and administer a motor vehicle insurance database that shall include information provided by insurance companies by July 1, 2004. The database is to be used by the DMV to facilitate registration of motor vehicles in this state by the DMV and its agents. The following is the current timeline for design, testing, piloting, and full implementation of the database:

The DMV will begin the pilot project as soon as possible after Janu-

<u>Process</u>	<u>Start date</u>
* Detail design development and testing	Nov. 2003
* Pilot project	Jan. 2004
1 st stage – receive data	
2 nd stage – return data	
3 rd stage – process data	
* Begin enrollment of all insurance companies	April 2004
* Complete enrollment process	July 2004

ary 1, 2004. The following types of companies will participate in the pilot project: a voluntary commercial lines company, a large personal policy company, a medium personal policy company, and a small personal policy company. The *Nebraska Insurance Reporting Guide* has been completed and made available by the DMV for use by the insurance industry to prepare for the implementation of the Motor Vehicle Insurance Database. You may locate this guide and a complete overview of the project by visiting DMV's website at www.dmv.state.ne.us.

FRAUD DIVISION

Fraud Trends

The Fraud Prevention Division is noticing an increase in complaints from insurance companies and law enforcement concerning the manufacture and possession of automobile insurance liability cards. One source stated this crime is reaching epidemic proportions in certain parts of the state. Manufacture of fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders is a Class IV felony punishable with a maximum

sentence of 5 years imprisonment, a \$10,000 fine, or both. Possession of fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders with knowledge and intent to defraud, is a Class I misdemeanor punishable with a maximum sentence of not more than 1 year imprisonment, a \$1,000 fine, or both. ([Neb.Rev.Stat. §28-631](#))

Another trend observed is the increased use of health insurance identification numbers by relatives or friends of legitimately insured individuals. It can be speculated the downturn in the economy is responsible for the increase in insurance fraud. These referrals are investigated as claims fraud under the Insurance Fraud Act. Medical providers are requested to obtain proper identification when administering treatment.

The Fraud Prevention Division continually attempts to stress to law enforcement the importance of enforcing the provisions of the Insurance Fraud Act. In an effort to accomplish this, the Division is providing insurance fraud training to basic law enforcement recruit classes at the Nebraska Law Enforcement Training Center, Nebraska State Patrol Training Academy, and the Lincoln and Omaha Police Departments. It is anticipated this will be a great benefit to the overall fight against insurance fraud by having the first line officer aware of and trained in how to identify insurance fraud.

CONSUMER AFFAIRS DIVISION

Claimants Options Relating To Auto Repairs

Allegations of improper "steering" of private passenger automobile claimants to designated repair facilities is a primary concern.

The Nebraska Auto Body Association (NABA) recently approached the Department to express multiple concerns. One of their primary concerns involved allegations of improper "steering" of private passenger automobile claimants to designated repair facilities. NABA suggested that this issue is tied to quality and safety of some repairs. The particular concern cited involved replacement of auto glass.

Each company should review its claims procedures, keeping in mind the importance of policyholders and claimants not being misled about their options relating to repairs.

This article is simply to remind insurers of the current requirement and to suggest that each company review its claims procedures relating to this topic. It is important that policyholders and claimants not be misled about their options relating to repairs. The two relevant subsections of the Nebraska Unfair Claims Settlement Practices Act are [Neb.Rev.Stat. §44-1540\(15\)](#) & (16). Specific questions or inquiries for further detail about this topic may be directed to Bruce Ramge, Chief of Market Regulation.

Use of Credit Information in Personal Insurance

Consumer protection requirements imposed by the Model Act Regarding Use of Credit Information in Personal Insurance will apply to policies written or renewed on or after nine months after August 31, 2003. As we review responses to credit-scoring complaints relating to policies issued or renewed on or after May 31, 2004, the Consumer Affairs Division will be using the following checklist to make sure the company:

- did not calculate renewal rates, or deny, cancel or non-renew a policy of personal insurance, based solely on the basis of credit information;
- did not take adverse action against a consumer solely because he or she does not have a credit card account, without consideration of any other applicable factor independent of credit information;
- did not consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance, unless the insurer:
 - (a) treated the consumer as otherwise approved by the Director of Insurance,
 - (b) treated the consumer as if the applicant or insured had neutral credit information, or
 - (c) excluded the use of credit information;
- did not take an adverse action based on stale credit reports (older than 90 days);
- obtained updated credit information at least every 36 months or annually, if requested by the insured;
- did not treat the following factors as negative:
 - (a) credit inquiries not initiated by a consumer-requested transaction nor initiated by a consumer for his or her information,
 - (b) inquiries relating to insurance coverage,
 - (c) medically-related collections,
 - (d) multiple lender inquiries from within the same 30-day period,
 - (e) multiple automobile lender inquiries from within the same 30-day period;
- re-underwrote or re-rated and adjusted premium within 30-days following receipt of notice of an incorrect report; and
- provided required disclosures regarding use of credit information, including disclosure of the use of credit information to new applicants and disclosure of specific reasons for adverse actions.

EXAMINATION DIVISION

Pre-Need Exams Completed During Fourth Quarter, 2003

Berryman Funeral Home
EMM's Courts, Inc. d/b/a Johnson Funeral Home
Farmer & Son Funeral Homes, Inc.
Gubser Funeral Home
Holmes Funeral Home
Kracl Funeral Home
Kremer Funeral Chapel
Kucera Funeral Home-Prague
Levander Funeral Home
Lewis Funeral Chapels & Cremation Services
Marcy & Svoboda Mortuaries
Miller-Levander Funeral Home
Odean Colonial Chapel
Trump Memorials, Inc.

Financial Examinations Completed During Fourth Quarter, 2003

American General Indemnity Company
Angelina Casualty Company
Assurity Life Insurance Company
Clay County Mutual Insurance Company
Columbia National Insurance Company
Continental General Insurance Company
Coventry Health Care of Nebraska, Inc.
Farmers Mutual Insurance Company of Thayer County
Farmers Union Co-Operative Insurance Company
German Mutual Insurance Association of Nebraska
Inland Insurance Company
Mutual Insurance Company of Saline and Seward Counties
Nebraska Community College Insurance Trust
Nebraska Intergovernmental Risk Management Association
Nebraska Intergovernmental Risk Management Association II
Universal Surety Company
Woodmen Accident and Life Company

Financial examination reports become public documents once they have been placed on official file by the Department. Copies may be obtained from the Department at the cost of \$.50 per page.



Department Calendar

- Feb. 16: Department Closed – President's Day
- Mar. 10: Hearing on Department Regulations – Title 210, Chapters 16, 17, 18, and 41
- April 30: Department Closed – Arbor Day



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